S.B.Civil Writ Petition NO.2015/2003

Smt. Rajesh Kanwar
vs
The Addl. Director Department of State Insurance & Provident Fund (General Insurance Fund), Jaipur & Ors.

DATE OF ORDER : - 15.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. D.R. Gurjar, for the petitioner.
Mr. L.R.Upadhayay, Dy.GA, for the respondents.

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Heard learned counsel for the parties.

Brief facts of the case are that the husband of the petitioner,who was serving as constable was posted under the respondent no.3- The Commandant, 8th Batalian, RAC, IR Gazipur, Delhi while returning from his duty on 20th July, 2000 met with accident with an unknown truck at about 4.10 AM at village Loni, District Gaziabad. He was taken to hospital by one Sh. Stapal Singh and the victim was admitted in Guru Teg Bahadur Hospital where he died at about 10.45 AM on the same day, i.e., on 20th July, 2000. The copy of the post mortem report is placed on record as Annex.1. The petitioner's husband was the member of the group insurance scheme and he regularly contributed the amount towards the scheme. The petitioner being the wife of the deceased

Narayan Singh submitted a claim for getting the benefit of the group insurance. The petitioner is also nominee named in the insurance policy. The petitioner's case was rejected by the Addl. Director, State Insurance and Provident Fund, Jaipur vide order dated 24th Nov., 2000 (Annex.3) on the ground that petitioner's husband was in the intoxicated stage and, therefore, she is not entitled for the benefit under the insurance scheme. The petitioner is, therefore, aggrieved against the order Annex.3 dated 22nd Nov., 2000 preferred this writ petition.

The non-petitioner submitted reply to the writ petition and stated that as per terms and conditions of the policy contained in clause 4(b) the claimants are not entitled for the benefit under the insurance because of the reason mentioned above. The clause 4 is as under: -

> "4. Payment of compensation in respect of death, injury or Disablement of the Insured person (a) from intentional self-injury, suicide or attempted suicide, (b) whilst under the influence of intoxication liquor or drugs, (c) whilst engaging in Aviation or Ballooning, or whilst mounting into, dismounting from or travelling in any balloon or aircraft other than as a passenger (fare paying or otherwise) in any duly licensed standard type of aircraft any where in the world, (d) directly or indirectly caused by Beneral diseases or insanity, (e) arising or resulting from the Insured Person committing any breach of law with criminal intent."

Learned counsel for the respondent submitted that the deceased was admitted in Guru Teg Bahadur Hospital where alcoholic smell was

found positive, which was reported in the report prepared by Guru Teg Bahadur Hospital. However, no such report has been placed on record by the respondents.

I considered the submissions of learned counsel for th e parties and perused the documents placed on record. A bare perusal of the Annex.1 it is clear that the petitioner was admitted in the hospital immediately after the accident and, thereafter, he died on the same day. The doctor reported the cause of death as "shock due to hemorrhage as a result of poly trama to long bones and pelvis". In the report there is no mention that petitioner was in intoxication stage at the time when he was brought to the hospital. It is worthwhile to mention here that the petitioner was brought to the hospital immediately after the accident.

It is clear from the reply filed by the respondents that the respondents are relying upon only an observation, which according to them is reported in the report prepared by Guru Teg Bahadur Hospital showing that the hospital persons found alcoholic smell as positive, but such report has not been placed on record by the respondents for the reasons best known to them. When there is a documentary evidence and has not been submitted, the adverse inference is required to be drawn against the respondents. Assuming for the sake of arguments,

that there was alcoholic smell coming near from the body of the deceased even then it cannot be presumed that he consumed the liquor because he was brought to the hospital by other persons and not he came of his own, therefore, mere smell near the body of the deceased cannot be a proof of consuming alcohol by the deceased.

In view of the above, the writ petition of the petitioner deserves to be allowed, hence, allowed. The order Annex.3 dated 24th Nov., 2000 is quashed and set aside. The respondents are directed to give the benefit of the insurance policy of the deceased to the petitioner within a period of two months from today with interest as per rules and if there are no rules then interest may be awarded @ 6% per annum.

(Prakash Tatia), J.

c.p.goyal/-